

§ 55-11-12. Merger between parent unincorporated entity and subsidiary corporation or corporations.

(a) Subject to the other provisions of this section and Article 9 of this Chapter, a parent unincorporated entity owning shares of a domestic subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary corporation and that have the power to vote in the election of directors at the time of a merger under this section may merge the subsidiary corporation or corporations into itself, or merge itself and one or more subsidiary corporations into another subsidiary corporation, without approval of the board of directors or shareholders of the subsidiary corporation or corporations, unless the articles of incorporation for the subsidiary corporation or corporations require approval of the shareholders of the subsidiary corporation or corporations, if both of the following requirements are met:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each merging business entity.
- (2) Each merging business entity complies with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(b) If any shareholder of the domestic subsidiary corporation, other than the parent unincorporated entity, has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then the plan of merger under subsection (a) of this section shall require the affirmative approval, by vote or written consent, of that shareholder.

(c) If the parent unincorporated entity does not own all the outstanding stock of the subsidiary corporation, the surviving business entity shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

(d) The surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth all of the following:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (2) The terms and conditions of the merger.
- (3) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.
- (4) The name of the merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.
- (5) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in a plan of merger or board resolution.

(e) The provisions of the articles of merger may be made dependent on facts objectively ascertainable outside the articles of merger if the articles of merger set forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the corporation or by any other person, group, or body.

- (3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.
- (f) A merger takes effect when the articles of merger become effective. (2018-45, s. 23.)